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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

WALTER GOODSON,

Defendant and Appellant.

F071800

(Super. Ct. No. BF152669B)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John W. Lua, Judge.

Ross Thomas, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Detjen, J. and Franson, J.

Walter Goodson appeals after he pled guilty to one count of voluntary manslaughter, and admitted various enhancements as part of a plea agreement. His only argument is that some of the fines imposed by the trial court violated his right to be free from ex post facto laws. (U.S. Const., art. I, § 10; Cal. Const., art. I, § 9.) We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

As the result of a gang related drive-by shooting, the information charged Goodson, along with codefendant Spencer Earl Rogers with (1) first degree murder (Pen. Code, § 187, subd. (a)),¹ (2) attempted murder (§§ 187, subd. (a), 664), (3) active participation in a criminal street gang (§ 186.22, subd. (a)), and (4) discharge of a weapon from a vehicle (§ 246).² The information also alleged numerous enhancements related to the crime, and prior conviction sentence enhancements as to both defendants.

The matter proceeded to trial. During pretrial hearings pursuant to Evidence Code section 402, Goodson reached a plea agreement with the prosecution. He agreed to plead no contest to voluntary manslaughter (§ 192, subd. (a)), admit a gang enhancement pursuant to section 186.22, subdivision (b)(1)(B), admit he served a prior prison term within the meaning of section 667.5, subdivision (b), and admit he suffered a prior conviction that constituted a strike within the meaning of section 667, subdivisions (b)–(i). In exchange, he would be sentenced to the mitigated term of three years, doubled because of the strike prior, plus five years for the gang enhancement, and one year for the prior prison term enhancement, for a total term of 12 years in prison. The remaining counts and enhancements were to be dismissed.

Defense counsel made it clear that Goodson was accepting the plea because he was facing a life sentence and, although he felt he was innocent, he would rather take the

¹ Further statutory references are to the Penal Code unless otherwise indicated.

² Rogers was charged with numerous additional crimes unrelated to this appeal.

plea than face the life sentence. The information was amended to charge Goodson with voluntary manslaughter, and the trial court thereafter accepted Goodson's plea, and sentenced him according to the agreement of the parties.

DISCUSSION

As part of the sentencing, the trial court imposed \$300 fines pursuant to section 1202.4, subdivision (b) (restitution fine), and section 1202.45 (parole revocation restitution fine). (Hereafter collectively the fines.) Goodson asserts the trial court erred in so doing. He argues the trial court intended to impose the minimum fine provided by law. At the time of sentencing, the minimum restitution fine was \$300. However, at the time the crimes were committed, the minimum restitution fine was \$280.³ This discrepancy, according to Goodson, violated his right to be free from ex post facto laws.

The Attorney General agrees the minimum restitution fine at the time the crime was committed was \$280, and at the time Goodson was sentenced was \$300. However, she argues there was no ex post facto violation.

The Attorney General's argument is both straightforward and compelling. The crime occurred in 2013. At that time, section 1202.4, subdivision (b)(1), provided that a person convicted of a felony after January 1, 2013, faced a minimum restitution fine of \$280 and a maximum fine of \$10,000. The amount of the fine was to be set "at the discretion of the court and commensurate with the seriousness of the offense." (*Ibid.*)

The fine imposed by the trial court was well within the statutory range. Moreover, there is no evidence in the record to suggest the trial court intended to impose the minimum fine permitted by law. Goodson was sentenced immediately after he entered his plea. He informed the trial court he wished to be sentenced immediately, and waived preparation of a probation report. No mention was made in the record about any fines

³ Section 1202.45, subdivision (a), provides that the parole revocation restitution fines shall be "in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4."

that were to be imposed as a result of the plea agreement. Nor did the trial court make any comment on the fines, other than imposing them, during the oral pronouncement of judgment. Therefore, the premise underlying Goodson's argument, that the trial court intended to impose the minimum fine permitted by statute, is unsupported by the record.

Nor could one argue that a fine slightly above the minimum required by law was an abuse of the trial court's discretion when considering the seriousness of the offense to which Goodson pled. Accordingly, the Attorney General concludes the judgment must be affirmed in its entirety.

Goodson failed to respond to this compelling reasoning in his reply brief, instead focusing on the assertion the argument was not forfeited when defense counsel failed to object.

We need not decide if the argument was forfeited because we conclude it lacks merit. The fine imposed was well within the statutory range in effect at the time the crime was committed, and the trial court did not abuse its discretion when it set the amount of the fines at \$300. In the absence of any evidence that the trial court's intention was to set the fines at the minimum allowed by law, we must affirm the judgment. (Evid. Code, § 664 ["It is presumed that official duty has been regularly performed."]; *People v. Alvarez* (1996) 49 Cal.App.4th 679, 695 [appellate courts do not presume the trial court misunderstood its discretion in the absence of affirmative evidence to support the claim].) In other words, the record simply does not support Goodson's argument.

DISPOSITION

The judgment is affirmed.